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unless that period is extended by the Judicial Officer. During this holding period, the appellant may apply for the withdrawal of the matter. If any such application is made, the General Counsel shall be given notice and the opportunity to oppose the application. Upon the expiration of the holding period with no application having been made, the Judicial Officer shall order that the matter be disposed of in accordance with 39 U.S.C. 3001(b). If a timely application is made, the Judicial Officer shall consider the application and any reasons advanced by the General Counsel for denying the application. The Judicial Officer shall thereafter order either that the matter be returned to the applicant or that it be disposed of in accordance with 39 U.S.C. 3001(b).

### § 953.17 Ex parte communications.

The provisions of 5 U.S.C. 551(4), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

## PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF SECOND-CLASS MAIL PRIVILEGES

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## 39 CFR Ch. I (7-1-97 Edition)

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11567, June 16, 1971, unless otherwise noted.

### § 954.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

### § 954.2 Scope of rules.

The rules of practice shall apply to all Postal Service proceedings concerning applications, denials, suspensions and revocations of second-class mailing privileges arising under former title 39 U.S.C. 4351, 4352, 4353, 4354, 4355, 4356, and 4369 as continued by sec. 3 of the Postal Reorganization Act (Pub. L. 91-375).

### § 954.3 Informal dispositions.

These rules do not preclude the informal dispositions of second-class mailing privilege matters before or after institution of proceedings.

### § 954.4 Office business hours.

The offices of the officials mentioned in these rules are located at the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260, and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[38 FR 17217, June 29, 1973, as amended at 42 FR 7955, Feb. 8, 1977]

### § 954.5 Application.

A publisher may file an application for second-class mailing privileges. (See Part 132 of this chapter.) An authorized administrative official of the Postal Service (hereinafter called "the authorized official") rules upon all applications. If he denies the application he shall notify the publisher specifying the reasons for his denial and attaching a copy of these rules. Before taking action on an application, the authorized official may call upon the publisher for additional information or evidence to support or clarify the application. Failure of the publisher to furnish such information or evidence

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may be cause for the authorized official to deny the application as incomplete or, on its face, not fulfilling the requirements for entry.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 42 FR 30504, June 15, 1977]

### §954.6 Revocation or suspension.

When the authorized official determines that a publication is no longer entitled to second-class mailing privileges, he shall issue a ruling of suspension or revocation to the publisher at the last known address of the office of publication stating the reasons and attaching a copy of these rules.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

### §954.7 Failure to appeal proposed action.

A ruling of the authorized official shall become final upon failure of the publisher to file a petition in accordance with the requirements of §954.8(b).

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

### §954.8 Pleading.

(a) *Place of filing.* Parties shall file an original and three copies of all documents of record, unless otherwise ordered by the presiding officer with the Docket Clerk of the Postal Service, who shall cause copies to be delivered to the other parties and to the presiding officer. Service is ordinarily made on the private parties by certified mail and delivery is deemed complete when a document or notice of its arrival is left at the designated address. The Docket Clerk shall maintain a docket and the files in all proceedings.

(b) *Petition.* A publisher may appeal from a ruling of the authorized official by filing a petition within 15 days of the receipt of the ruling unless the time is extended by the authorized official. The petition shall state the reasons why the publisher (designated "Petitioner" in the proceeding) believes the ruling of the authorized official is erroneous and shall provide the address at which documents may be served on the Petitioner. The petition shall also allege facts showing compliance with each provision of law or reg-

ulation on which the publisher's claim to second-class mail privileges is based. The publisher shall attach to his petition a copy of the letter of the authorized official denying, suspending or revoking second class mail privileges.

(c) *Notice of hearing.* Upon receipt of the petition the Docket Clerk shall set a date for the hearing and issue a notice of hearing to the parties stating the time and place of the hearing, the date for filing an answer, and the name of the presiding officer.

(d) *Answer.* The authorized official (designated the "Respondent" in the proceeding) shall answer the petition within 15 days after filing and admit or deny each allegation of the petition.

(e) *Amendment.* An amendment of a pleading may be offered by any party at any time prior to the close of the hearing. If the presiding officer deems it appropriate to permit the amendment of a pleading, he may impose such conditions, by way of continuance of the hearing date or otherwise, as he considers necessary to assure a fair hearing.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

### §954.9 Default.

If a publisher fails to appear at the hearing, the presiding officer may: (a) Dismiss the petition; (b) order the petitioner to show cause within 30 days from the date of the order why an order of dismissal should not be entered, and thereafter enter such order as the presiding officer deems to be appropriate. If the petition is dismissed by order of an Administrative Law Judge, the dismissal may be appealed to the Judicial Officer within 15 days from the date of the order.

### §954.10 Intervention or other participation.

To intervene or otherwise participate in a proceeding, any person may file a timely application in accordance with §954.8(a). A timely application is one which will not unduly delay the proceeding. The application shall state whom the potential intervenor represents, his interest, the extent to which he desires to participate, and the evidence he seeks to introduce. The presiding officer shall fix the time

within which the parties shall answer the application. The presiding officer shall grant or deny the application on such terms and conditions as he deems appropriate. In so doing the presiding officer will consider, among other things, whether intervention or other participation is consistent with the timely and proper adjudication of the rights of the original parties.

[31 FR 5198, Mar. 31, 1966. Redesignated at 31 FR 16270, Dec. 20, 1966]

**§ 954.11 Hearings.**

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

**§ 954.12 Change of place of hearing.**

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement setting forth:

- (a) The evidence to be offered in such place;
  - (b) The names and addresses of the witnesses who will testify;
  - (c) The reasons why such evidence cannot be produced at Washington, DC.
- The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

**§ 954.13 Appearances.**

(a) The General Counsel of the Postal Service or a member of his staff designated by him shall represent the Director.

(b) A publisher or intervenor may appear and be heard in person or by attorney. Attorneys may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

(c) An attorney representing a publisher or intervenor shall file a written authorization from the publisher or intervenor before he may participate in the proceeding. The publisher or intervenor must promptly file a notice of change of attorneys.

(d) When a publisher or intervenor is represented by an authorized attorney

all subsequent pleadings shall be served upon the attorney.

**§ 954.14 Presiding officers.**

(a) The Chief Administrative Law Judge shall assign each case to an Administrative Law Judge qualified in accordance with law to preside over the hearing. Such assignments shall be made, so far as practical, in rotation.

(b) The presiding officer shall have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses;
- (3) Rule upon matters of evidence and procedure;
- (4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;
- (5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;
- (6) Require the filing of briefs on any matter upon which he is required to rule;
- (7) Order prehearing conferences for the settlement or simplification of issues by consent of the parties;
- (8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;
- (9) Render an initial decision.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 38 FR 20263, July 30, 1973]

**§ 954.15 Judicial Officer.**

The Judicial Officer is authorized (a) to act as presiding officer at hearings and (b) to render a final Postal Service Decision for the Postmaster General. On appeal from an Initial Decision of an Administrative Law Judge, the Judicial Officer will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, the Judicial Officer may order the hearing reopened for the presiding officer to take additional evidence.

**§ 954.16 Procedure.**

(a) *Evidence.* The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent

that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas.* The Postal Service is not authorized to issue subpoenas.

(c) *Fees.* The Postal Service does not pay fees and expenses for witnesses of, or depositions requested by, the publisher or intervenor.

(d) *Depositions.* Depositions may be taken as follows:

(1) Not later than 5 days after the filing of Director's answer, any party may file application with the presiding officer for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(2) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(3) Each witness testifying upon deposition shall be duly sworn by the deposition officer and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or

to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(4) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(5) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(6) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(7) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

**§ 954.17 Transcript.**

(a) A contract reporter of the Postal Service under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Postal Service and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his receipt of the transcript or any part thereof. Other parties shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing if they object to the requested corrections. Failure of a party to interpose timely objection to a proposed correction may be considered by the presiding officer to be concurrence. The presiding officer shall then specify the corrections to be made in the transcript. He may on his own initiative order corrections in the transcript after notice to the parties subject to their objection.

**§ 954.18 Proposed findings and conclusions.**

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings and conclusions are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Docket Clerk. The Docket Clerk shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings and conclusions will not be considered or included in the record.

(b) Except when presented orally, proposed findings of fact and conclusions of law shall be set forth in numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions pro-

posed. Each proposed conclusion shall be separately stated.

**§ 954.19 Initial decision.**

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings and conclusions orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision with all due speed after the parties have submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact and law presented on the record and the reasons for those findings.

**§ 954.20 Appeals.**

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt of a written or oral initial decision.

(b) The time for the filing of the reply brief is 10 days after receipt of the appeal brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

(d) Reply briefs shall contain paragraphs (c) (1), (2), and (3) of this section

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and the reasons for opposing the exceptions.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

### §954.21 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of a final Agency decision.

### §954.22 Continuances.

For good cause shown, continuances or extensions may be granted by the presiding officer. Similar action may be taken by the Judicial Officer when the proceeding is on appeal.

### §954.23 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or holiday, in which event the period runs until the close of business on the next working day.

### §954.24 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

### §954.25 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial and final Agency decisions. The Docket Clerk of the Postal Service maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

### §954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

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